

1 [The accused continues with his unsworn statement.]

2 MJ [CAPT ALLRED]: Okay. It looks like we're ready to continue.

3 ACC [MR. HAMDAN]: Of course, they were always asking me--
4 talking to me about this subject. So I told them that he was causing
5 a lot of problems and a lot of people killed in the U.S. It was a
6 story or sad thing to see innocent people killed. I don't know what
7 could be given--presented to these innocent people who were killed in
8 the U.S. All I can tell them is--is patience. I personally
9 represent my apologies to them if any think what I did has caused
10 them any pain.

11 I also like to apologize to the members again. There was
12 also the Australian, David Hicks, who was in the cell next to me, and
13 he was presented for a trial at the commission here--military
14 commission, and they had accused him of material support to
15 terrorism, and they have sentenced him to 9 months. His term of his
16 prison is over with in his home country, and he's free with his
17 family right now, with his children. And again, my apologies one
18 more time. Thank you.

19 CDC [MR. SWIFT]: We have nothing further to present at this
20 time, Your Honor.

21 MJ [CAPT ALLRED]: Okay. Mr. Hamdan has completed his unsworn
22 statement then?

23 CDC [MR. SWIFT]: That is correct, Your Honor.

1 MJ [CAPT ALLRED]: Okay, members of the court, even though Mr.
2 Hamdan was not under oath during the presentation of the unsworn
3 statement, that is recognized as an acceptable method for him to
4 bring to your attention matters that he would like you to consider as
5 you deliberate on and consider a sentence for him.

6 Anything else from the defense?

7 DC [LCDR MIZER]: No, Your Honor.

8 CTC [MR. MURPHY]: Your Honor, I think we should note as well
9 that we are prohibited from questioning him with this procedure as
10 well.

11 MJ [CAPT ALLRED]: This is true.

12 CDC [MR. SWIFT]: Nothing else from the defense, Your Honor.

13 MJ [CAPT ALLRED]: Okay. Does the government have any evidence
14 in rebuttal?

15 TC [LCDR STONE]: Sir, we might. If we can have a--probably a
16 quick couple of minutes to discuss?

17 MJ [CAPT ALLRED]: We'll just wait while you chat it up amongst
18 yourselves.

19 TC [LCDR STONE]: Okay.

20 CDC [MR. SWIFT]: I believe we'll need a 39A session anyway
21 before going into argument, Your Honor.

22 MJ [CAPT ALLRED]: Okay.

1 CDC [MR. SWIFT]: Or I guess it's an 803 here. Old habits die
2 hard, sir.

3 MJ [CAPT ALLRED]: Okay. In that case--well, let's see what the
4 government has in mind.

5 **[Government counsel conferred.]**

6 TC [LCDR STONE]: After conferring, we will offer no rebuttal.

7 MJ [CAPT ALLRED]: Very good. Okay. So we need to--I think
8 we'll excuse the members here for a few minutes to give the counsel a
9 chance to collect their thoughts about their arguments, I'll reveal
10 my instructions with them, and why don't we come back into the
11 courtroom at 11 o'clock for arguments and instructions? We'll shoot
12 for that. Okay? **[The members nodded in response.]**

13 BAILIFF: All rise.

14 **[All persons did as directed, and the members withdrew from the**
15 **courtroom.]**

16 **[The military commission terminated and the R.M.C. 803 session was**
17 **called to order at 1040, 7 August, 2008.]**

18 MJ [CAPT ALLRED]: Okay please be seated **[all persons did as**
19 **directed].**

20 DC [LCDR MIZER]: Your Honor, the defense would--would just
21 request that the members, when you instruct them, be given the same
22 instruction that they were given on findings, that conviction from
23 material support of a terrorist organization permits the accused to

1 be punished only for the acts that he did and not for the criminal
2 acts of the organization itself; exact same instruction that was
3 given on findings. And I think the important thing here is that the
4 government should not be permitted to argue, as I suspect they--they
5 may wish to, about the crimes of al Qaeda. They may, of course, make
6 reference to the crimes for which Mr. Hamdan has been convicted, but
7 not those crimes committed by al Qaeda, particularly when they have
8 acquitted Mr. Hamden of--of the broader conspiracy and responsibility
9 for those crimes, sir. It kind of dovetails with your ruling earlier
10 this morning.

11 MJ [CAPT ALLRED]: I don't remember giving that instruction with
12 respect to findings. Can you tell me specifically what it was that I
13 agreed to instruct?

14 DC [LCDR MIZER]: It's one of the four, with respect to material
15 support, Your Honor. And I believe that I have it. Actually, I left
16 my--my copy of the instructions out of the courtroom, but it's one of
17 the four underneath material support, Your Honor, the four that the
18 defense requested.

19 MJ [CAPT ALLRED]: Okay. Why don't you--I don't think I still
20 have my instructions here with me either. Well, maybe I do. Here's
21 a copy of the defense proposed instructions. You know, I don't think
22 I gave that instruction on findings. My note here says that that
23 pertains only to sentencing and that wouldn't have been an

1 appropriate instruction on findings.

2 DC [LCDR MIZER]: I thought that was in the instruction, Your
3 Honor, but to the extent that it's appropriate for sentencing, we
4 would now----

5 MJ [CAPT ALLRED]: Okay. Well, what the defense is requesting
6 then is an instruction that says, "A defendant who is convicted of
7 material support for an international terrorist organization is
8 punished solely for the criminal act of material support not for the
9 illegal conduct of the international terrorist organization."

10 DC [LCDR MIZER]: That's correct, Your Honor. And that's in
11 accordance with federal case law cited in our proposed instructions.

12 CTC [MR. MURPHY]: Your Honor, the government does, though,
13 intend to argue that he has been found to be a member of the
14 organization----

15 MJ [CAPT ALLRED]: I don't think he has.

16 CTC [MR. MURPHY]: In Specification 2.

17 MJ [CAPT ALLRED]: I don't think he--I don't think that's what
18 it says.

19 Specification 2 says that he contributed----

20 TC [LCDR STONE]: By becoming a member of the organization and
21 performing.

22 MJ [CAPT ALLRED]: Specification 2. Oh, I'm sorry; it does say
23 that.

1 CTC [MR. MURPHY]: And the government does intend to argue that,
2 Your Honor. Also, his material support has been found to facilitate
3 the transportation and the planning used for acts of terrorism,
4 specifically, terrorist acts adduced at trial, that the government
5 showed that before and after East Africa, he provided assistance;
6 after the COLE, he provided assistance; and before, during, and after
7 9/11, he provided assistance.

8 MJ [CAPT ALLRED]: Okay.

9 CTC [MR. MURPHY]: The government does intend to reference that.

10 MJ [CAPT ALLRED]: Well, you can--you can allude to--you didn't
11 specify any particular terrorist acts, which----

12 CTC [MR. MURPHY]: Correct.

13 MJ [CAPT ALLRED]: ----which he is alleged to have supported.
14 And so I don't know that I'm going to let you go very far in asking
15 the members to consider any of those terrorist acts. You can, I
16 think, fairly allude to those three attacks: East Africa, the COLE,
17 and the 9/11 attacks, as things that Al Qaeda did, but I'm going to
18 instruct the members that he's only to be sentenced for his acts and
19 not for the illegal conduct of the organization.

20 CTC [MR. MURPHY]: Right.

21 MJ [CAPT ALLRED]: If you want him to be sentenced for the
22 illegal conduct of the organization, you have to get a conspiracy

1 conviction, so that he's legally liable for the acts of his co-
2 conspirators. Don't you agree with that?

3 CTC [MR. MURPHY]: I agree that he was not found as a
4 conspirator but that his material support was proven to be to provide
5 services, including transportation, body guard services,
6 facilitating, and planning used for acts of terrorists.

7 MJ [CAPT ALLRED]: Okay, well, you can----

8 CTC [MR. MURPHY]: And that comes straight from the charge
9 sheet.

10 MJ [CAPT ALLRED]: You can read--you can make those arguments
11 straight from the charge sheet because that's what he's been found
12 guilty of.

13 CTC [MR. MURPHY]: Right.

14 MJ [CAPT ALLRED]: But--let's see. I guess you don't object
15 then to me giving this instruction that the defense is requesting,
16 which says, "Not for the illegal conduct of the international
17 terrorist organization."

18 CTC [MR. MURPHY]: I think, to make it abundantly clear, though,
19 Your Honor, but you may consider the facts contained in the charges
20 you did find him guilty of.

21 MJ [CAPT ALLRED]: Okay. I think that's fair, and that way,
22 he's being sentenced for the acts that he's committed.

23 DC [LCDR MIZER]: And, Your Honor, I'd like to be precise, we're

1 dealing only with Specification 2 before the members.

2 MJ [CAPT ALLRED]: Well, that's what he's going to be sentenced
3 for.

4 DC [LCDR MIZER]: Yes, I think there's been reference repeatedly
5 to Specifications 5 and 6. The only specification before the
6 members, given your multiplicity and unreasonable multiplication
7 charge ruling, excuse me, is Specification 2.

8 CTC [MR. MURPHY]: Your Honor, it's the government's
9 understanding that they're combined. Obviously, they're sentencing
10 him on one specification, but the government does intend to argue
11 that he was convicted of five specifications that are now going to be
12 considered in sentencing as one, and they are grouped.

13 MJ [CAPT ALLRED]: I think that's fair. I mean, he was found
14 guilty of--of providing support for specific acts of terrorism,
15 vague, though, they may be. So, I'll permit vague references to acts
16 of terrorism and instruct the members that they're to sentence him
17 only for his material support and not for the----

18 DC [LCDR MIZER]: Yes, Your Honor.

19 MJ [CAPT ALLRED]: ---- illegal conduct.

20 Okay. Other than that, I gather that the standard
21 sentencing instructions are acceptable to all the parties?

22 CDC [MR. SWIFT]: Two other things, we wanted to put on to the--
23 counsel made reference to five specifications, I trust that that was

1 just the point that counsel was going to--what he could argue, but
2 that he wasn't going to argue that he's been found guilty of five
3 specifications, because that is the exact reverse of multiplicity at
4 this point.

5 CTC [MR. MURPHY]: Your Honor, the government is going to be
6 cautious on this, but I think it's fair to say he was convicted of
7 five specifications, but that the members for sentencing will
8 consider one, and merge all of them into that one.

9 MJ [CAPT ALLRED]: I think that's--I think that that's fair. I
10 mean basically--the problem is, as I've tried to make it clear, the
11 other four kind of restate conduct that you already charged under
12 Specification 2, and I let you send those specifications back to the
13 members to preserve whatever issues might come out on appeal, but, in
14 fact, you know, driving is mentioned in Specification 2, body
15 guarding is mentioned in Specification 2, and----

16 CTC [MR. MURPHY]: Your Honor, the government doesn't intend to
17 dwell on this, but we'll make a brief reference to it. I've
18 carefully written out my closing, so I believe the government will
19 not be straying into any areas that are beyond what we've discussed
20 here.

21 MJ [CAPT ALLRED]: Okay. If you do, I'll just shut you down.

22 CTC [MR. MURPHY]: Right.

23 CDC [MR. SWIFT]: Yesterday, Your Honor expressed the intention

1 to give a sentencing or pretrial credit sentencing instruction.

2 Generally, that's to the benefit of the accused, it's not a mandatory
3 instruction. And having thought about it overnight, we would request
4 that you not give that instruction.

5 MJ [CAPT ALLRED]: Not tell the members that he's going to get
6 credit for part of the time?

7 CDC [MR. SWIFT]: And I won't be arguing anything on his time on
8 Guantánamo, so I won't go against it either. But we request that you
9 not give them that instruction. It's to the benefit of the accused
10 under the clearer part of it, but we decided, through consultation,
11 that we would not like the instruction given. There are other
12 instructions, such as his failure to testify, that are supposedly to
13 his benefit, but in weighing it, we request, if it's a non-mandatory
14 instruction that it not be given.

15 MJ [CAPT ALLRED]: All right. Let's see. Is the government
16 going to be requesting a fine?

17 TC [LCDR STONE]: No, sir, and we have actually prepared the
18 sentencing worksheet in two ways that eliminate the fine as a
19 possibility.

20 MJ [CAPT ALLRED]: Okay. Well, I won't give the instruction on
21 fines then.

22 TC [LCDR STONE]: Sir, we would like to have a minute or two
23 with regards to the defense's not wanting the sentencing--the credit

1 instruction. I think my gut feeling is that we would like that to be
2 included, but I could at least talk with some people here to see if
3 that's kind of what our position is.

4 MJ [CAPT ALLRED]: Okay. Do you want to do that off the
5 record?

6 TC [LCDR STONE]: Yes, sir, I think so, and we can certainly
7 just get back to you after we've made a decision and----

8 MJ [CAPT ALLRED]: Okay. Why don't we come back on the record a
9 couple of minutes before 11 and--the sentencing instructions are very
10 simple so----

11 CDC [MR. SWIFT]: I'll need a little time. I have set up my
12 closing argument in such a way as to not and I'm using some
13 demonstrative aids as to not argue pretrial credit. So that if it
14 were reversed, I'd need a little a time. Our part on--our position
15 is that it's a non-mandatory instruction for our benefit, we would
16 ask that it be--we waive its reading or ask that----

17 MJ [CAPT ALLRED]: Well, take a recess and let you think about
18 it.

19 **[The R.M.C. 803 session recessed at 1050, 7 August 2008.]**

20 **[The R.M.C. 803 session was called to order at 1106, 7 August 2008.**

21 **All parties present when the Commission recessed were present again.]**

22 MJ [CAPT ALLRED]: The court is called to order. During the
23 recess, I was handed a note. I think has been shown to both counsel.

1 CTC [MR. MURPHY]: Yes, Your Honor.

2 DC [LCDR MIZER]: Yes.

3 MJ [CAPT ALLRED]: From a representative of the Los Angeles
4 Times, I believe, pointing out that the press and the American people
5 are interested in these proceedings and that they want to have
6 maximum access. I think what happened is, after we finished taking
7 the classified portion of Mr. Hamdan's statement, the audio feed
8 didn't get reconnected to the remote viewing area.

9 So the court instructed--the court reporters have burned a
10 disc with that audio, and they're transcribing it now to deliver to
11 the press as fast as we can type the last few minutes of his
12 statement.

13 As far as I know, the transcript of the testimony of
14 Colonel [REDACTED] and Lieutenant Colonel [REDACTED] is at SOUTHCOM being
15 reviewed. Hopefully, we can get that back today, so maybe that can
16 be released as well.

17 Okay. Government, have you completed your huddle?

18 TC [LCDR STONE]: Yes, sir. And we do not object to not giving
19 the instruction.

20 MJ [CAPT ALLRED]: Okay. It shall be done. And are there any
21 other issues then to resolve before we call the members in for
22 arguments and sentencing instructions?

1 TC [LCDR STONE]: I have one question on the personal matters of
2 the accused. With that consideration of what we're doing, I have the
3 section seven, duration of the accused's detention, as a potential--
4 you know, the law doesn't require----

5 MJ [CAPT ALLRED]: I'll just--I'll just mention it. I think----

6 TC [LCDR STONE]: Okay. Does the--I was going to see whether
7 the defense wants that to be mentioned in light of the idea that they
8 do not want the instruction?

9 MJ [CAPT ALLRED]: That says the law does not require that you
10 use any specific formula in considering this pretrial confinement,
11 but it does require that you consider it and give it the weight you
12 deem appropriate.

13 DC [LCDR MIZER]: That's fine. Charlie that's fine.

14 MJ [CAPT ALLRED]: Okay. We'll do to that.

15 TC [LCDR STONE]: I would change the word from "pretrial" to
16 "detention," and use the terms, "July 1, 2003 through today." Is
17 that----

18 MJ [CAPT ALLRED]: Well----

19 CDC [MR. SWIFT]: That's misleading.

20 MJ [CAPT ALLRED]: I think I'm just going to leave it vague.
21 Oh, I see, it does say--it does have a--yeah, I think I'll just say
22 pretrial detention and leave it at that.

23 TC [LCDR STONE]: Okay.

1 MJ [CAPT ALLRED]: Okay. Are both parties prepared to argue
2 then with respect to----

3 CTC [MR. MURPHY]: We are, Your Honor.

4 MJ [CAPT ALLRED]: Are you the man on this one?

5 CTC [MR. MURPHY]: I am, Your Honor.

6 MJ [CAPT ALLRED]: Okay.

7 Please ask the members to return to the courtroom.

8 **[The R.M.C. 803 session terminated and the military commission**
9 **commenced at 1109, 7 August 2008.]**

10 BAILIFF: all rise **[all persons did as directed, and the members**
11 **entered the courtroom].**

12 MJ [CAPT ALLRED]: Please be seated **[all persons did as**
13 **directed].**

14 MJ [CAPT ALLRED]: Members have returned to the courtroom.
15 Trial Counsel, you may make your argument with respect to a sentence.

16 CTC [MR. MURPHY]: Thank you, Your Honor.

17 Mr. President and members, let me begin by thanking you
18 again for your time, and your attention, and your--and your important
19 consideration of all of the facts in this case.

20 We're now turning to the argument on sentencing, a very
21 important decision that you will make, and I have comments for you,
22 representing the government, that we believe are tremendously
23 important for you consider and evaluate when you go back and consider

1 sentencing on your findings in this case.

2 I'd start by noting that you have found the accused guilty
3 of five extremely seriously offenses, five separate specifications of
4 providing material support for terrorism. Your findings in all five
5 of these specifications are now to be considered by you, grouped in a
6 single specification for sentencing.

7 The seriousness of the one specification for sentencing
8 before you now is reflected in the fact that this one specification
9 carries a sentencing possibility of life imprisonment, and it
10 properly carries this high possible penalty for a reason, and you
11 should consider life sentencing possibilities when you consider all
12 of the facts in this case and some of the particularly aggravating
13 aspects in this case.

14 Briefly, I will mention that factually you found the
15 following in your verdict. You found between the time of February
16 1996 through and including November 24, 2001, the accused provided
17 material support for terrorism, all during a period in which the
18 United States was in the armed conflict with al Qaeda. You found
19 that he became an actual member of the al Qaeda organization. You
20 found he received training at the al Qaeda training camps. You found
21 he served as a driver for Usama bin Laden, the most wanted and
22 dangerous terrorist in the world today. You found he served as an
23 armed bodyguard of bin Laden. You found he transported weapons and

1 weapon systems and other supplies for the purpose of delivering these
2 weapons to al Qaeda members and associates. You found he provided
3 the services of transportation directly facilitating communication
4 and planning used for an act of terrorism. You found he protected
5 the leader of al Qaeda and facilitated communication and planning for
6 terrorist acts, plural, acts of terrorism. You found he provided
7 armed bodyguard services for Usama bin Laden by knowing that--that by
8 providing armed bodyguard services for bin Laden, he was protecting
9 the leader of al Qaeda and facilitating communication and planning
10 used for acts, plural, acts of terrorism. All that came right from
11 the findings in the specifications that you deliberated on. You have
12 found him guilty of offenses that have made our world extremely
13 unsafe and dangerous. Anyone, anyone who provides material support
14 for terrorism is a serious war criminal and a continuing threat to
15 our society. He stands today as a convicted war criminal. His
16 material support of terrorism has changed our world as we knew it.
17 They changed it dramatically in our lifetime and perhaps changed it
18 forever. Material support for terrorism is never a victimless crime.
19 Moreover, his offenses are particularly aggravated in several ways
20 the government will discuss. But let me first say that his support
21 for terrorism will now be met and judged by you and with justice. I
22 think this dichotomy is particularly important in your sentencing.

1 Your Honor, I would ask that the members and the gallery be allowed
2 to see my slides.

3 MJ [CAPT ALLRED]: Very well.

4 CTC [MR. MURPHY]: The government requests and asks that your
5 sentence reflect all of the following. The magnitude of his
6 offenses, considering the victims and families of the victims of his
7 material support for terrorism to al Qaeda. The government asks that
8 you deliver a sentence that will absolutely keep our society safe
9 from him and disable him from further criminal conduct. Keep him
10 away from society not superficially but permit him to reform over a
11 very long period of time. A long time will be necessary, if you
12 think reform is even possible. And your sentence should send a
13 message to all others that if anyone thinks of providing material
14 support to the sword of terrorism, directed at our citizens and the
15 citizens of the world, there will be painful consequences for those
16 actions. A consequence that is so great that others may think again
17 about aligning themselves with the likes of Usama bin Laden or the
18 next Osama bin Laden and provide any material support for terrorism.
19 His social condition, life difficulties, and life in Yemen, and his
20 need for a job cannot be seen as an acceptable excuses for providing
21 material support for terrorism. And they should be summarily
22 rejected out of hand as unworthy mitigation in this case.

1 Once you see your boss killing people, you leave. You get
2 another job, period. He provided material support for terrorism
3 before and after the East Africa attack, after the USS COLE attack,
4 before, during, and after 9/11. He never abandoned bin Laden or left
5 the side of al Qaeda. He only stopped when he was finally captured.
6 He may never really leave the ideology of al Qaeda.

7 Telling us, through Dr. Keram, that Mr. Hamdan is now
8 praying for the victims of 9/11 after the watching the video of the
9 9/11 attack is as much offensive as it is manipulative. He provided
10 material support for terrorism not once but again and again. And now
11 he's praying for victims? Are you hearing fake prayer and fake tears
12 and a strained effort to manipulate you? We know one thing, Salim
13 Hamdan, you see today, is a convicted provider of material support of
14 terrorists.

15 Dr. Karam, although she denies it, is really an advocate
16 for Mr. Hamdan. She wants the lowest possible sentence from you.
17 She is paid by the defense. She has spent an astounding 120 hours
18 just on this one case. And despite her education and skills and
19 academic expertise, she has been to some degree manipulated by Hamdan
20 himself and his desire to escape justice. I'm glad you got to hear
21 Dr. Keram just to see how Hamdan is capable of manipulating and
22 duping others, even experts.

1 And you should also note in Dr. Keram's testimony that she
2 discounted nearly all of the FBI reports that contradicted Mr.
3 Hamdan. She is simply giving him a voice. And most of what she said
4 was provided during or after the trial, a time when the statements of
5 this accused are completely self-serving.

6 The accused has a family, and understandably feels bad
7 about his separation from them. You should feel badly for his
8 family. He has made them suffer. He should have thought about them
9 when he became a member of al Qaeda, a driver for al Qaeda, a
10 bodyguard for al Qaeda, a weapons transporter for al Qaeda, an al
11 Farouq trained member of al Qaeda, a bayat pledged member of al
12 Qaeda, a person who looks at Usama bin Laden and his terror, looks at
13 the attacks on our East Africa embassies, an attack, by the way, that
14 is exactly 10 years old today, the attack on our destroyer and our
15 sailors on the USS COLE, and the attack on 9/11 killing more than
16 3200 people. And saying, knowing all of that, that when he thinks of
17 these attacks and when he thinks of bin Laden, he is filled with
18 uncontrolled enthusiasm, passion, or zeal.

19 All of this reflects that he is really a heartened al Qaeda
20 member, who may never change his true attitude and his true desires
21 and his true intent in the future. When you think of his family and
22 the photos you saw, you should remember that he abandoned them when
23 he provided material support for terrorism. And you should think of

1 the victims of his material support of terrorism and their families,
2 living each day without loved ones, and their photographs that are
3 forever changed.

4 Now, Mr. Hamdan gave an unsworn statement. He said of some
5 of these things: that he respected bin Laden and bin Laden respected
6 him. Respect? How could anyone respect anything about bin Laden and
7 his organization? He said he felt that the relationship was normal.
8 That was his word, normal. Is there anything normal about it? He
9 said he wanted to work at a level that met his ambition. So that
10 means working for a terrorist? He said he had to--had to go back to
11 Afghanistan after his marriage. De he really have to return? Did he
12 really have to go back to bin Laden and al Qaeda? He said he--when
13 he saw the pictures of the COLE, he couldn't understand that UBL was
14 behind it. But he doesn't say or talk about the many, many, many
15 speeches at training camps where he heard UBL say he would do just
16 that, bring terror to the West. His claim of surprise or lack of
17 understanding flies in the face of the truth. He knew what was
18 coming. He should never have been surprised that it happened. He
19 said he was shocked by bin Laden. How could he be shocked after the
20 many speeches, media events, after the East Africa attack and the
21 COLE attack, and the 9/11 attack? It's not believable. He says he's
22 sorry about the people who were killed in the attack. He offers

1 apologies. It's a little late. And it's a long after he knew
2 exactly what he was up to. He's not to be believed.

3 This is the period of time that you have found in your
4 findings when this accused worked with and supported bin Laden from
5 February of '96 all the way to his capture in November of 2001.
6 Those are pictures of what he supported in your finding of material
7 support of terrorism. And he did it by using stealth, by hiding, by
8 low-key movements, by being very good at moving al Qaeda leadership.
9 And this is the map for East Africa. Stealth again, before, during,
10 and after 9/11.

11 He's an al Qaeda member. You found that in Specification 2
12 of Charge II. And he knew exactly where maybe the number two leader
13 was buried. This is Tarnak Farms, a place where al Qaeda and the EIJ
14 merged to become an even more terrible organization. He knows that
15 place. He's been to that place. He's heard the speeches at that
16 place. He was a member, and he was an inner circle member. He knew
17 the very house that UBL lived in at Tarnak Farms.

18 You found him to be a weapons transferor for al Qaeda. And
19 he even had the very note from Khaled, having Saqr, that is the kunya
20 for Saqr al Jadawi, Hamdan, to deliver pika magazines in support of
21 al Qaeda. Protection, weapons, here's but two pictures, and radios,
22 the things essential to keep al Qaeda alive and moving, to keep the
23 band of killers operating. And arrogance. You may remember the

1 testimony. It's been a while, but I bet you do remember, the
2 testimony of Special Agent [REDACTED] when he talked to the
3 accused about his attitude towards who was at fault for these
4 terrorist attacks. What's this accused's attitude as you learned
5 from Agent [REDACTED]? Well, the accused said "You did nothing. Bin
6 Laden was emboldened, so it's your fault." That's his attitude. Ask
7 yourself how much true apologies are contained in that statement.
8 Cooperation. The accused talked a little bit about that in his
9 unsworn statement. But you might want to judge that against his
10 first opportunity to cooperate in the capture video. How
11 cooperative, really, was he there? Did he provide or volunteer any
12 information, important tactical information, within the first 24
13 hours that might have had some real value such as, "When did you last
14 see bin Laden"? Did you see him answering that or volunteering that
15 bit of information? Where are the al Qaeda leader members right now,
16 within moments of your capture? Do we hear that? That would have
17 been helpful. We didn't hear any of that. How can we capture bin
18 Laden, when he could have provided that within 24 hours, before al
19 Qaeda changed all its op plans, knowing that he was captured. He
20 didn't volunteer that information. Cooperation? It wasn't really
21 provided. The tour that you heard from Agent [REDACTED], the two
22 missions in February 12th and March 13. The accused took the agent
23 to these locations. They were all previously known, all exploited,

1 information that had long been known to the United States; not true
2 cooperation. Consequences, those are summed up best in the two
3 quotes that you've seen before, and I highlight, again, because of
4 their importance from Special Agent--former Special Agent [REDACTED],
5 "Support terrorists; support terrorist acts." That's the most
6 succinct way you can put it. That's what your findings reflect in
7 this material support conviction. That sums it up and it shows the
8 seriousness of it. Agent [REDACTED], "Without people like Mr. Hamdan,
9 bin Laden would enjoy no support, enjoy no protection, and would
10 probably have been unable to elude capture up until this point."
11 That's a chilling statement and reflects the consequences of his
12 criminal conduct. These are the al Qaeda leaders identified by him.
13 They're leering at us. They are al Qaeda. They are or were
14 dangerous to us. He was one of them. I returned to the original
15 slide. This is the period in which he provided all of his material
16 support. And when you think of sentencing and issues of sentencing,
17 think of that timeline and think of the four points listed below on
18 that slide. Retribution, your sentence should properly reflect the
19 victim's outrage at his conduct. He should pay for what he did with
20 an appropriate punishment. Now, punishment alone isn't our sole
21 purpose in our system of justice, but it is an appropriate
22 consideration. Our society was wounded by the actions of this
23 accused with his material support of terrorism. Indeed the whole

1 world was harmed by his material support of the al Qaeda terrorist
2 organization. Specific deterrence and public safety, keep dangerous
3 people, such as him, where he can no longer harm society. He needs
4 to be incapacitated and disabled from further criminal conduct. We
5 need to have confidence as a society that he will never provide
6 material support for terrorism again. Prevent others from recruiting
7 him, especially if he is so susceptible to manipulation by others, as
8 suggested by the defense. This is the part that may make him so
9 dangerous. He can be led by the worst of the worst and do their
10 bidding. His penalty should be so significant that it forecloses any
11 possibility that he reestablishes his ties with terrorists. General
12 deterrence. Your sentence should say that the United States will
13 hunt you down and give you a harsh but appropriate sentence if you
14 provide material support for terrorism. Material support for
15 terrorism is not consequence-free. Deprivation of liberty, removal
16 from family life is a painful consequence. But the penalty must
17 sting significantly or the price will not be high enough to deter
18 those who would be seduced by radical and charismatic leaders.

19 Reform and rehabilitation. First, ask yourself, is it even
20 realistic? Someone with such deep seated emersion in radical Islamic
21 terrorism, needs plenty of time to turn around in a way that is not
22 purely superficial. You must consider that that day may never come,
23 and the risk of ever releasing him is simply too great.

1 The government comes to you with an earnest and important
2 sentencing recommendation. The government asks you to return a
3 sentence in this case of not less than 30 years in imprisonment and
4 consider the real possibility that a life sentence may be the most
5 appropriate sentence in this case. But he should get not one day
6 less than 30 years.

7 Let's talk about your voting on an appropriate sentence in
8 this case. You will go through a process during your sentencing
9 deliberations, where you and other members will write down a number
10 for a possible sentence of years in prison to be voted on by all of
11 the members. The government would ask you to do one thing, one
12 important thing just before you write down a number or a vote on a
13 number suggested by another member. Before you act on any number,
14 take one second, just one second, and think about the victims of
15 Hamdan's material support of terrorism. Think of them, consider
16 them, remember their families. That number, your sentence, will be
17 their justice. If someone is suggesting an unjust number, vote no,
18 and keep deliberating. Don't settle for anything you don't consider
19 just. You have an awesome responsibility because your work is our
20 justice, and you should not flinch from it, and you should be
21 steadfast in your determination to apply it. Do justice in this
22 case. Based on all the many, many facts you know that have been put
23 forth before you over two weeks, reflecting the accused's conviction

1 for material support for terrorists, and the law given to you. And
2 please, do justice for all the victims of material support of
3 terrorism in this case. Thank you for your attention.

4 MJ [CAPT ALLRED]: Thank you, Mr. Murphy. And for the defense?

5 CDC [MR. SWIFT]: We'd like a brief 39(a), Your Honor.

6 MJ [CAPT ALLRED]: Okay, members would you step out of the
7 courtroom, please?

8 BAILIFF: All rise **[all persons did as directed, and the members**
9 **withdrew from the courtroom].**

10 **[The military commission terminated and the R.M.C. 803 session was**
11 **called to order at 1136, 7 August 2008.]**

12 MJ [CAPT ALLRED]: Okay, please be seated the members have
13 withdrawn from the courtroom **[all persons did as directed].**

14 DC [LCDR MIZER]: Your Honor, at this time the defense would ask
15 for a mistrial. I mean, this is precisely the issues that we sought
16 to avoid: Mr. Murphy, putting up picture after picture after picture
17 of the COLE, the embassy bombings, and those towers. The sole Charge
18 before the jury is material support for terrorist organizations. And
19 as I requested before this argument, the accused is punished for the
20 individual acts of material support to that terrorist organization
21 not the crimes of the terrorist organization. There is an
22 impassioned plea for the victims of the crimes of the organization
23 repeatedly, and again, the inflammatory pictures that the members

1 have--have acquitted Mr. Hamdan of having any involvement in it. I
2 think the argument was inflammatory and should result in a mistrial,
3 Your Honor.

4 MJ [CAPT ALLRED]: Okay. Well, I was waiting for an objection
5 during the course of the trial counsel's argument, if you had one,
6 and you passed on many opportunities to object, had you wanted to
7 object. The trial counsel repeatedly asked the members to sentence
8 the accused for his material support to terrorism and identified the
9 various attacks that had occurred over the years in vague and
10 indirect terms. I'm going to deny the request for a mistrial. But I
11 will give the instruction that you requested, and you can argue that
12 strongly to the members when it's your turn to your argue.

13 DC [LCDR MIZER]: All right, sir. Thank you.

14 MJ [CAPT ALLRED]: Thank you.

15 Call the members back in please.

16 **[The R.M.C. 803 session terminated and the military commission**
17 **commenced at 1138 hours, 7 August 2008.]**

18 BAILIFF: All rise **[all persons did as directed, and the members**
19 **entered the courtroom].**

20 MJ [CAPT ALLRED]: Please be seated **[all persons did as**
21 **directed].** We're ready to continue. And the argument for the
22 defense, Mr. Swift?

23 CDC [MR. SWIFT]: I have demonstrative aids.

1 Good morning, again. I spoke to you--most of you, almost
2 all of you at the beginning. My name is Charlie Swift, and I've been
3 on this case the longest. I was assigned to represent Mr. Hamdan all
4 the way back in December of 2003. I was in the military then; I've
5 since retired. My seniority would have given me the opportunity to
6 argue anything, not necessarily because I'm the better counsel; I
7 would never make such a boast. In fact, when I look at my other co-
8 counsel, I don't even want to try, but seniority would've allowed me
9 to. But I asked to wait to this point because I've been with Mr.
10 Hamdan for over 5 years now, and I knew that at this point, this was
11 the critical point in the trial. Here is where we need to determine
12 what justice does. When I was assigned to military commissions, what
13 I wanted to do was to ensure that down here, 50 years from now, we'd
14 talk about justice and we'd be proud. I read stories when I first
15 came down here from the military commissions in Guam and in Tokyo and
16 in Germany. Some of the stories weren't pretty, and some of them
17 made me proud. And so I asked, because I understood when I saw the
18 facts, I saw the charges against Mr. Hamdan, especially the second
19 time around, that we would be here for material support. I
20 understood that, but this is where it becomes critical.

21 Now, the prosecution has already talked to you briefly
22 about the theories of punishment, and I'll start by saying one of the
23 things that makes us unique is we don't sentence based on passion.

1 We sentence based on the law, and the law is what is important and
2 based on the theories of punishment that lets us craft a punishment
3 not for everyone, but for each individual accused. And so we must
4 tailor every punishment to fit not only of the accused, to meet his
5 needs because we are not a vindictive society. That is what makes us
6 great. We are more concerned with meeting the needs of the accused
7 because what we want are law abiding people, not only in the United
8 States but everywhere. Rehabilitation is the principle goal of any
9 sentence. So let's start by talking about rehabilitation.

10 Next slide.

11 Dr. Keram, who we've heard a lot from, explained a lot
12 about who Mr. Hamdan is. In the first phase of the trial, what we
13 heard about was what Mr. Hamdan had done. In the second phase of the
14 trial, we heard about who he is. She explained his family history,
15 something I'd learned the first time I talked to him. Why this
16 person, who didn't have an Islamic ideology, would go to Afghanistan.
17 Why? Well, because he was **[inaudible]**. Because this was the
18 opportunity. Didn't really understand much about it, fourth grade
19 education, wasn't ideological. But unfortunately for Mr. Hamdan,
20 there was a group of people that provided a kind of a second family
21 for him, and they provided an awful lot of money. And Mr. Hamdan's
22 dreams changed. He was living on the street, no way to get ever get
23 ahead. In the Arab world, if you don't have the money to pay for a

1 wife, then you cannot have a wife. You don't have a family.
2 Suddenly, things that he didn't ever think were possible were made
3 possible. And they gave him that opportunity and he told you, he
4 looked the other way. Yes, he looked the other way because they were
5 giving him something he wanted so very badly. Not to attack America,
6 not to attack the world, but to have a family, to have a chance, to
7 have a dream. I've traveled to Yemen; I've seen the family. I've
8 seen the videos of the people [inaudible]. You've seen the video of
9 his wife. And sitting in place, you see what he finally got. In
10 1998, he got a family. Something he'd never thought he'd have. The
11 problem was it came with a price tag. It came with a price tag. He
12 needed to keep supporting them, and the only way that he got to that
13 level was because Usama bin Laden paid 10 times what he could have
14 earned, when one considers that he got to keep or save all of the
15 money, his boarding was paid for, then he could have ever made. So
16 he made a series of bad decisions in retrospect. And on a lot of
17 these things, when you hear statements, you have to understand are
18 they made when and where in time and place. Looking back, they are
19 terrible decisions, and he knows that. He described it in his
20 statement being caught between two fires. And he turned a blind eye.
21 But I will tell you here today, that the absolute best chance, as Dr.
22 Keram has testified, for his rehabilitation is the opportunity to
23 reunite with that family. His absolute, his best chance. But what

1 it's called, a safety factor, because he won't put them at risk
2 again. And we have the extraordinary statement, "I'll just ride off
3 into the desert," is not materially possible, but it is more of no
4 more chances, no more risk, to have no more.

5 Next statement--next slide, please.

6 And we've also talked a lot on whether Mr. Hamdan is faking
7 it or not. And you know what, both counsel argue, we argue, but who
8 should you really listen to? I'd submit you should listen to Dr.
9 Keram who testifies on both sides, but more than that, you need to
10 listen to Colonel [REDACTED] and Lieutenant Colonel [REDACTED] because they
11 told about what Mr. Hamdan was truly rehabilitated. Sometimes
12 there's an act that occurs in someone's life that says, "There's no
13 going back, you've crossed that bridge."

14 Trial counsel suggests that maybe Mr. Hamdan will go back.
15 I think we all know that if Mr. Hamdan goes back, he's a dead man.
16 He may be a dead man anyway, but he's not going back. We talked
17 about in the rehabilitation portion that trial counsel suggests,
18 "Well, he didn't really cooperate because right there when he was
19 captured, he didn't talk." Well, we know exactly why he didn't talk
20 because he was scared out of his mind. He thought the Afghans or
21 someone would kill him. And when he learned that wouldn't happen in
22 Bagram, he cooperated absolutely to the nth degree, and that has
23 never been contradicted. We learned it in the secret testimony

1 because the United States needs to protect it, not because it's not
2 true. Special Agent [REDACTED] told you that he was willing to
3 testify against one of the COLE bombers, provide that key testimony
4 that says he's bragging afterwards. As a criminal defense attorney,
5 I know that there's nothing worse than your client talking about it
6 after the fact. Key testimony. Could he go back after 40 interviews
7 where he gave up everyone?

8 Next slide, please.

9 We talked about the deterrence of an individual. You know,
10 and here, I think some of the things that Dr. Keram said about Dr.
11 Sageman play in. If Mr. Hamdan were the person that trial counsel,
12 still after this entire trial, tries to make him out to be, if he
13 were that person, such a person could never be deterred. But such a
14 person doesn't take a vacation. They aren't described by their
15 fellow, by what the prosecution says are fellow members, as some
16 simple Bedouin who changes the oil with contempt. Mr. Hamdan worked
17 for money, and he understands all too well that that ain't the way,
18 that's not the way to earn money, no matter how well the reward might
19 get him. But again, in deterrence, before he was--before this trial,
20 years before, Mr. Hamdan had already changed sides.

21 Next slide, please.

22 Deterrence of others. That somehow we'll give a sentence
23 and this will stop others. That's actually one of the best arguments

1 sometimes for a long sentence is, "Now, we still need to deter those
2 out there; they need to hear about it." But I want you to think
3 about what the trial counsel's asking. They're saying, in effect,
4 give him life, because we also heard of the actuarial tables. Sixty-
5 two years old in Yemen; Mr. Hamdan is 40, they asked for 30 years.
6 That's life; he'll be dead. They're just asking for life in two
7 different ways. Who will cooperate, when they're told that's the end
8 of the road? At the end of the road, the reward for cooperation is
9 life. That's what you get. Will anyone--does that help us in this
10 struggle in any way? Will we get someone else to help after that
11 becomes known? Throughout this part, we are going to have to weigh
12 culpability versus the cooperation.

13 Next slide, please.

14 Protection of society. It's been suggested at some times
15 that he's an al Qaeda warrior. What evidence have we seen of his
16 warrior prowess or his warrior tendencies? He's not being charged
17 with shooting at anyone. His conduct has been completely consistent
18 with being a driver. I'm not the only one who told you that.
19 Colonel [REDACTED] from the stand, told you that. Completely consistent.
20 When confronted what does he do? Run away, completely consistent
21 with someone who's simply paid to drive. But most importantly here,
22 and this is unique to Guantánamo, you need to understand that
23 completion of Mr. Hamdan's sentence does not equal his release. What

1 it does is make him eligible for administrative release. In other
2 words, it makes him eligible for parole. It's the first day on which
3 he'd be eligible to be released. Not that he will be released, but
4 someone else will make a separate determination as to whether he
5 really presents a risk to society. It's the first day to ask for
6 reconsider.

7 Next slide, please.

8 We're really down to punishment. And the truth, because as
9 we've heard, Mr. Hamdan doesn't need more time to become more
10 rehabilitated. He doesn't need more time to be deterred, and his
11 danger to society is not going to be determined by the length of his
12 sentence when he is released. We're down to what is the appropriate
13 punishment. Now, trial counsel has suggested throughout this process
14 that Mr. Hamdan's culpability is such that he should bear 30 years to
15 life. He's shown a lot of attacks. And I want you to ask yourself a
16 question. I want you to ask yourself a question. But for Mr. Hamdan
17 being born, do you honestly believe that we would've been spared one
18 attack? One? That one less person would be dead but for Mr.
19 Hamadan's life. Not one.

20 Now, let's look at cooperation and look at but for them
21 too, because we heard in here, but for we will not know how much he
22 might have been able to give but for intervening events. We don't
23 know how much cooperation. In fact, you know, if we were to take

1 that scale and look at it, and say, "Gee, who has Mr. Hamdan really
2 helped more? Who has benefited more from his existence? Us or Usama
3 bin Laden." In the intelligence game, the opportunity, some of which
4 we squandered, but who's gained more? Truth is, we have. So when we
5 weigh his culpability, we must also put it on cooperation. Now, Mr.
6 Hamdan told you there's been one trial here. David Hicks, he got 9
7 months, also for the crime for which Mr. Hamdan was convicted
8 material support.

9 Now, I'm not going to stand in front of you and say that
10 Mr. Hamdan is equally culpable as Mr. Hicks. Mr. Hamdan has been
11 there since 1996. That's absolutely true. I won't strain it. But
12 it's also true that he's provided far, far, far more cooperation.

13 CTC [MR. MURPHY]: objection, Your Honor. Asking the members to
14 consider any cooperation of anyone else are not facts in this case at
15 all, and the slide materially misstates the facts.

16 MJ [CAPT ALLRED]: I'll overrule that. This came into evidence
17 a long time ago without any objection and counsel can comment on it.

18 CDC [MR. SWIFT]: What I would say here, Your Honor, is that in
19 any way that we do the math to come up with a number that there is no
20 way that Mr. Hamdan's sentence or his culpability on this material
21 support charge and his actions when you subtract out his cooperation
22 is more 5 five times that of David Hicks because justice is
23 evenhanded. Justice moves across the **[inaudible]**. Justice is

1 balanced, and I would submit to you, I'll leave it to your discretion
2 to decide because those balances that is best left with you. But
3 there is no way from our point here that it is five--more than five
4 times what Mr. Hicks did. And then, that would equal a maximum
5 sentence of 45 months. And so I will ask you to go in and look and
6 find on that scale where do we fit. There has been a lot talked
7 about on justice, and there are no doubt other trials, and at some
8 point, we will bring the people who planned, the people who
9 conspired, the people who brought those buildings down, but that's
10 going to be a great day. That's going to be a great day. But one of
11 the things that's important on that day is that the world recognized
12 that it is justice and not revenge. And Mr. Hamdan's trial, where we
13 meet our justice here, where we look at his cooperation and his
14 culpability. And don't given the fact life sentence will make the
15 sentences in those trials mean that they are justice. And the
16 victims of 9/11 and other places will receive their justice, and it
17 will be all the more meaningful because we got the guys who did it,
18 not their driver. And we will have an opportunity because we
19 recognize cooperation, and we recognize the opportunity for
20 rehabilitation to win this war by bringing over people like Mr.
21 Hamdan to our side because one day that's how we get him. And Mr.
22 Hamadan is right, it is time for Usama bin Laden to go.

1 And the sentence the government proposes doesn't help that,
2 they ignore it. There is a time and place for it, but I will ask you
3 to consider, you know, there's an old saying--an old story that goes,
4 "Chinese gentlemen, very wise man, a youth come to him and in his
5 hands, they had a bird and he thought he had fooled the old man by
6 asking him this question. 'Is he alive or is he dead?' And if the
7 old man said, 'He's alive,' then the boy would crush the bird, open
8 his hands, and say, 'No, old man, you're wrong.' And if the old man
9 says, 'It's dead,' he'd open his hands and let the bird fly free,
10 and say, 'No, old man, it's alive.' So he looked at the old man and
11 he said, 'Old man, you're very wise. Is the bird alive or dead?'
12 And the old man looked at him and said, 'The bird is not in my hands.
13 He's in yours, my son.'" For 5 years, I've carried Mr. Hamdan, I've
14 done everything I could for him. I've done everything to see that
15 justice was done in this case. The fate of Mr. Hamdan is no longer
16 in my hands. It's in yours, and I trust in yours. Thank you very
17 much.

18 MJ [CAPT ALLRED]: Thank you, Mr. Swift.

19 CTC [MR. MURPHY]: Your Honor, does the government have rebuttal
20 sentencing?

21 MJ [CAPT ALLRED]: No.

22 CTC [MR. MURPHY]: No?

1 MJ [CAPT ALLRED]: No, the government doesn't get a rebuttal in
2 sentencing argument.

3 CTC [MR. MURPHY]: Okay.

4 MJ [CAPT ALLRED]: Members of the court, before I read the
5 sentencing instructions, I would like to give you a particular
6 instruction.

7 During the course of the government's argument, the
8 prosecution showed you photographs of various terrorist attacks that
9 have occurred over the years, and asked you to consider the victims
10 of those attacks in reaching your sentence. With respect to that, I
11 would like to remind you that the accused has not been convicted of
12 those attacks or participating in them directly. A defendant who is
13 convicted of material support for an international terrorist
14 organization is punished solely for the criminal act of material
15 support and not for the illegal conduct of the international
16 terrorist organization. Does each of you understand this instruction
17 and agree to apply it in your deliberations?

18 I see affirmative responses from all members.

19 You are about to deliberate now and vote on the sentence in
20 this case. It is the duty of each member to vote for a proper
21 sentence for the offense of which the accused has been found guilty.
22 And as I mentioned yesterday, all of the offenses are considered to
23 be one single offense for purposes of your sentencing deliberations.

1 Your determination of the kind and amount of punishment, if any, is a
2 grave responsibility requiring the exercise of wise discretion.
3 Although you must give due consideration to all matters in mitigation
4 and extenuation, as well as those in aggravation, you must bear in
5 mind that the accused is to be sentenced only for the offense of
6 which he has been found guilty, which is the offense of providing
7 material support to an international terrorist organization.

8 You must not adjudge an excessive sentence in reliance upon
9 possible mitigating action by the convening or another authority.

10 The maximum punishment for the offense of which the accused has been
11 found guilty is confinement for life. Bear in mind that the maximum
12 punishment is a ceiling on your discretion. You are at liberty to
13 arrive at any lesser sentence or a sentence of no punishment at all
14 based upon your own evaluation of the evidence presented.

15 As I have indicated, this court may sentence the accused to
16 confinement for life. Unless confinement for life is adjudged, your
17 sentence to confinement should be adjudged either in full days, full
18 months, or full years without the use of fractions. For example,
19 confinement for a year and a half should be announced as confinement
20 for 18 months. If you wish, as I said, you may sentence the accused
21 to receive no punishment. Anything between those two bookends is
22 within your discretion.

1 In selecting a sentence, you should consider all the
2 matters in extenuation and mitigation as well as those in aggravation
3 whether introduced before or after your findings. Thus, all of the
4 evidence you've heard in this case is relevant to the subject of
5 sentencing, remembering, of course, only to sentence the accused for
6 the offenses of which he is found guilty and not for the offenses of
7 which he was found not guilty. Among the matters you should consider
8 in this case are the accused's age; he's 40 years old. You should
9 consider the duration of the accused's pretrial confinement or
10 detention, I should say. The law does not require that you use any
11 specific formula in considering this pretrial detention, but it does
12 require that you consider the detention and give it the weight you
13 deem appropriate.

14 The accused's education is estimated to be a third or
15 fourth grade level education. You should consider also the accused's
16 marital status, married with two children, and that he is the sole
17 support for those children. You should also include in your
18 considerations the accused's unsworn statement and his expressions of
19 remorse. The accused, as I said, has an absolute right to remain
20 silent in this proceeding. The court will not draw any inference
21 adverse to the accused from the fact that he did not elect to testify
22 under oath as a witness during the sentencing portion of the trial.
23 The court will not draw any adverse inference to the accused from the

1 fact that he did not elect to testify under oath as a witness during
2 the sentencing phase of the trial. An unsworn statement is an
3 authorized means for the accused to bring to your attention
4 information he wants you to consider as you consider a sentence and
5 that must be given appropriate attention. The accused cannot be
6 cross-examined by the prosecution or interrogated by court members or
7 me with respect to his unsworn statement, but the prosecution was
8 offered the opportunity to rebut statements of fact contained in
9 that; they did not offer any rebuttal. The weight and significance
10 to be attached to an unsworn statement rests within the sound
11 discretion of each court member. You may consider that the statement
12 is not under oath, its inherent probability or improbability, and
13 whether or not it is contradicted or supported by other evidence in
14 the case as well as any other matter that may have a bearing upon its
15 credibility. In weighing your unsworn statement--I'm sorry, in
16 weighing this unsworn statement, you are expected to utilize your
17 common sense, your knowledge of human nature, and the ways of the
18 world.

19 Our society recognizes five principle reasons for imposing
20 sentences on those who violate the law. These are protection of
21 society from the wrongdoer, punishment of the wrongdoer,
22 rehabilitation of the wrongdoer, preservation of good order and
23 discipline in society, and deterrence of the wrongdoer and those who

1 know of his crime and his sentence from committing the same or a
2 similar offense.

3 When you close to deliberate and vote, only the members
4 will be present. And your deliberations should begin with a full and
5 free discussion on the subject of sentencing. The influence of
6 superiority and rank shall not be employed in any manner to control
7 the independence of members in the exercise of their judgment. When
8 you've completed your discussion then any member who desires to do so
9 may propose a sentence. You do that by writing out on a slip of
10 paper a sentence you propose, which in this case can only address a
11 period of confinement or no period of confinement. The junior member
12 collects the proposed sentences and submits them to the president,
13 who will arrange them in order of their severity. You then vote on
14 the proposed sentences by secret written ballot. All must vote; you
15 may not abstain. Vote on each proposed sentence in its entirety
16 beginning with the lightest, until you arrive at the required
17 concurrence, which is two thirds or four members. A sentence that
18 incurs--includes confinement in excess of 10 years requires the
19 concurrence of three-fourths of the members, that is five members.
20 The junior member will collect and count the votes. The count is
21 then checked by the president, who shall announce the result of
22 ballot to the members. If you vote on all of the proposed sentences
23 without arriving at the required concurrence, you then repeat the

1 process of proposing and voting upon sentences. The second time
2 around, if a member desires do so, he may vote on all new proposals
3 or on proposals rejected on an earlier vote. But once a proposal has
4 been agreed to by the required concurrence, then that is your
5 sentence. You may reconsider your sentence at any time prior to its
6 being announced in open court, but after you reach and determine a
7 sentence, if any member suggests reconsideration of the sentence,
8 open the court, and I will give you specific instructions on how to
9 reconsider a sentence that you have already reached.

10 The president should only announce that reconsideration has
11 been proposed without announcing whether the proposed re-ballot
12 concerns increasing or decreasing the sentence. As an aid in putting
13 your sentence in proper form, you may use the next appellate exhibit
14 in order, which is a sentencing worksheet.

15 I'll ask the bailiff to deliver this to the senior member
16 now. **[Bailiff handing the AE 322 to the President]**. The worksheet
17 only offers two possibilities. No punishment or confinement for a
18 period of time that you may select.

19 Once you have the decision as to the punishments you will
20 impose, please fill out the worksheet, cross out the words that don't
21 apply, and sign it at the bottom, so it's clear that this is your
22 sentence.

1 If during deliberations you have any questions concerning
2 sentencing matters, please open the court, and I will take up those
3 questions with you. I would ask that if you do have such a question
4 that you write it down in advance, send it out to me via the bailiff,
5 and we might need to do some research or discuss what the proper
6 answer is for your question.

7 You may not consult the Manual for Military Commissions or
8 any other writing not admitted into evidence. My instructions, of
9 course, must not be interpreted as indicating any opinion on my part
10 as to what would be an appropriate sentence in this case. That
11 decision is entirely for the members of the court.

12 In your deliberation room, you will have all of the
13 evidence that have been admitted--all of the exhibits, I should say,
14 that have been admitted into evidence. I don't believe we have any
15 new evidence admitted in sentencing do we? What do we have?

16 CDC [MR. SWIFT]: The photographs.

17 MJ [CAPT ALLRED]: The photographs. The photographs and the
18 videotape of Mrs. Hamdan were admitted during sentencing so those
19 will be provided to you if you want to review those again. Please do
20 not mark on any of the exhibits except the sentencing worksheet. In
21 accordance with your best judgment, based upon the evidence that has
22 been presented in this case and your own experience that general
23 background, you should select a sentence which bests serves the ends

1 of good order and discipline in society, the needs of this accused,
2 and the welfare of society.

3 Are there any questions regarding these instructions?

4 PRES: Yes, Your Honor. I assume, Your Honor, you're going to
5 give us a copy of the instructions that you've----

6 MJ [CAPT ALLRED]: I didn't prepare a copy of these written
7 instructions for today. I can Xerox the pages of the judge's bench
8 book here, if you want to refer to any particular parts of the
9 instructions, but I don't have a document to hand you.

10 PRES: During deliberations that would be fine, sir.

11 MJ [CAPT ALLRED]: Okay, we'll see----

12 PRES: ----and then I did have another question. I wrote it
13 down, if you'd like the bailiff to----

14 MJ [CAPT ALLRED]: Sure. Bailiff?

15 Why don't you show that to counsel, bailiff, like you've
16 done with the other questions? **[The bailiff retrieved the question**
17 **from member number one and handed it to defense table. Defense**
18 **counsels reviewed, marked, and then turned it over to Prosecution**
19 **table. Trial counsels reviewed and marked. The bailiff retrieved**
20 **the question from prosecution table and handed it to the military**
21 **judge.]**

22 MJ [CAPT ALLRED]: Okay. We'll mark this as the next appellate
23 exhibit in order. Okay. Looks like I will need to consult with

1 counsel outside the presence of the members before answering this
2 question.

3 What I propose here, it's 1215. We would normally recess
4 any way at 1230 for lunch, so why don't I excuse you for lunch, ask
5 you to return at 1400? 1400. I'll be ready to answer this question
6 when you return, and you can immediately begin your deliberations.
7 Fair enough?

8 PRES: Thank you, Your Honor.

9 MJ [CAPT ALLRED]: Thank you. We'll stand while all the members
10 withdraw from the courtroom.

11 BAILIFF: All rise **[all persons did as directed, and the members**
12 **withdrew from the courtroom].**

13 **[The military commission terminated and the R.M.C. 803 session**
14 **commenced at 1216 hours, 7 August 2008.]**

15 MJ [CAPT ALLRED]: All right, please be seated **[all persons did**
16 **as directed].**

17 The members have withdrawn from the court room.

18 Well, the question, "How many months has the accused served
19 in pretrial detention?" And the government wanted to discuss that
20 outside their presence.

21 What's the issue your--you'd like me to consider?

22 ATC [MAJ ASHMAWY]: Your Honor, it was just unclear because we
23 actually spent quite a bit of time discussing the fact that we

1 weren't going to inform the members. Actually, I think when we were
2 discussing instruction it was initially the government's suggestion
3 that we tell them the period of time that he has been in detention,
4 and the court said that--that the court did not want to, in fact, do
5 that.

6 MJ [CAPT ALLRED]: The court didn't care; it was the defense
7 that didn't want it to that.

8 ATC [MAJ ASHMAWY]: Well, that was going to be my----

9 MJ [CAPT ALLRED]: And you guys said okay.

10 ATC [MAJ ASHMAWY]: And that was going to be my next point. Is
11 I just wanted to clarify the position of the parties.

12 MJ [CAPT ALLRED]: I don't know what your position--I don't know
13 what the defense hopes to achieve by not letting them know this. My
14 proposal is that we tell them the exact answer and exactly what he's
15 going to get credit for and what he's not going to get credit for,
16 and put it in their hands. That's where the burden should be.

17 DC [LCDR MIZER]: The defense agrees, Your Honor. We believe
18 that the statement--the answer should be he's been in--he's been
19 detained since November 24, 2001, and he will receive--I think we
20 need to bifurcate, though, I mean we need to have something that
21 says, "He will receive 61 months of credit, but you may also consider
22 that entire period of pretrial detention."

1 MJ [CAPT ALLRED]: Okay. Well, I'll answer this when they
2 return then, kind of that way.

3 CTC [MR. MURPHY]: Your Honor, I think the government would
4 suggest, though, that they not know of any confinement credit. That
5 really, I think, will confuse the verdict. They should give a
6 verdict that will be reviewed for what it stands for now and that any
7 future of this, either by the convening authority or the appellate
8 system, can have a sentence that reflects their judgment here and not
9 confuse it with any credit that's been imposed.

10 MJ [CAPT ALLRED]: Let me read you the instruction that is given
11 in every military trial on this point. It says, "In determining an
12 appropriate sentence in this case you should consider the fact that
13 the accused has spent X days or months in pretrial confinement. In
14 this connection you should also realize that if you adjudge
15 confinement as part of your sentence, the--that period of time the
16 accused spent in pretrial confinement will be credited against any
17 sentence to confinement you may adjudge. This credit will be given
18 by the convening authority and will be credited on a day for day
19 basis." So I mean, the prejudice you fear is something you've
20 learned to deal with by just giving the members the information as
21 they make their decision.

22 TC [LCDR STONE]: I think a more accurate--based on your most
23 recent ruling, sir, I think the more truly accurate information that

1 goes to the members is not November 20 with regards to credit, it's
2 November 24 through the time, but rather----

3 MJ [CAPT ALLRED]: Yeah, that's what I propose to do.

4 TC [LCDR STONE]: Right, but I mean, rather July 1, 2003, and I-
5 -I mean, the most--if the decision is from--you said, that the most
6 accurate information go to the jury, we may have to kind of play with
7 that other period prior to the time that you ordered credit, which is
8 July 1, 2003.

9 MJ [CAPT ALLRED]: How what you propose to play with that
10 period?

11 TC [LCDR STONE]: Well, if the instruction that you said says he
12 should be getting day for day credit----

13 MJ [CAPT ALLRED]: Well, I'll modify the instructions to say
14 that I ordered credit for this period and no credit for that period,
15 and you can consider that----

16 TC [LCDR STONE]: Well, that's ----

17 MJ [CAPT ALLRED]: ----as you reach whatever sentence you----

18 TC [LCDR STONE]: Right.

19 DC [LCDR MIZER]: Yes, Your Honor. We would just ask that there
20 be an instruction, as you stated, that they may also consider that
21 additional theory, for which you've----

22 MJ [CAPT ALLRED]: That's what the instructions will say.

23 DC [LCDR MIZER]: All right, Sir.

1 TC [LCDR STONE]: We would object to the considering of November
2 24th through the time in GTMO as a fact that he is held on the
3 battlefield incident to laws of war and would not otherwise be
4 considered any sort of pretrial punishment, pretrial credit, pretrial
5 detention, pretrial confinement, et cetera. So----

6 MJ [CAPT ALLRED]: Well, that's--that's kind of the reason I
7 reach the decision I reached is because for that period, it seemed
8 like he was properly detained under some other authority. All right.
9 Well, I'll craft an instruction that I hope will be satisfactory to
10 the parties. If I tell them that he's been detained for that period
11 of time and he's not going---that I didn't order credit for it maybe
12 I should also say something like, "He was detained under the law of
13 armed conflict principle of the battlefield detention," and let them
14 consider that.

15 ATC [MAJ ASHMAWY]: I think, Your Honor, in addition to that, is
16 that it's our position that it would not be appropriate that the
17 instruction says that based on United States law and the laws of
18 armed conflict, it would not be appropriate for them to give him
19 credit for that time that he was held incident to--to his detention.

20 MJ [CAPT ALLRED]: Well, I don't know whether it is or not.
21 The--what the instruction says--well, the instruction I've already
22 read with the parties concurrence says that you should give this the
23 pretrial detention the weight you deem appropriate. So I think maybe

1 that's what I ought to say with respect to the first part that I
2 didn't order credit, but you should give it the credit--the attention
3 you deem appropriate or whatever the word was here.

4 ATC [MAJ ASHMAWY]: The concern, Your Honor, is that his
5 pretrial detention started on the date that you determined and then
6 previously given him credit. Prior to that date, it would not be
7 pretrial detention, but it would--its detention in accordance with
8 the Law of War, and as such, he would not be entitled to----

9 MJ [CAPT ALLRED]: Well, I mean, the members are smart people.
10 When they say how many months has he been held in detention, they're
11 just going to wonder what happened between November of 2001 and June
12 of 2003. Where was he?

13 ATC [MAJ ASHMAWY]: I think it's appropriate just to tell them,
14 sir, that he's been in detention since 24 November 2001. But that it
15 is not appropriate for them to give him credit for that time because
16 he was held incident to----

17 MJ [CAPT ALLRED]: Okay. Okay. What I'm going to do then is
18 I'm going to them that he was held in detention during that period of
19 time, that I haven't ordered credit for that, but that they should
20 give it the weight they believe it deserves. And then I'll tell them
21 that I've ordered credit for the other period, and they should give
22 that the weight it deserves.

1 ATC [MAJ ASHMAWY]: Separate issue, Your Honor. If I may.
2 There's been evidence presented of--of the sentence given to David
3 Hicks in a previous court. Traditionally, and you have the
4 instruction in the bench book, members are instructed to not consider
5 that when crafting a sentence.

6 MJ [CAPT ALLRED]: You know that was objectionable. I expected
7 an objection from the government during that point.

8 ATC [MAJ ASHMAWY]: Actually, we did object, Your Honor. Mr.
9 Murphy did, in fact, object.

10 MJ [CAPT ALLRED]: He did during the argument, but when that
11 came in as part of the accused's unsworn statement, that would have
12 been the time to object.

13 ATC [MAJ ASHMAWY]: It's traditionally considered that an
14 accused's unsworn statement is unfettered.

15 MJ [CAPT ALLRED]: What instruction do you want me to give?

16 ATC [MAJ ASHMAWY]: The traditional instruction out on the bench
17 book, Your Honor, which is that it--while evidence has been
18 presented----

19 MJ [CAPT ALLRED]: You identify and bring it to me. Okay. I
20 don't know which one you're talking about right now.

21 ATC [MAJ ASHMAWY]: Absolutely, sir.

22 MJ [CAPT ALLRED]: It's not part of the standard sentencing
23 instructions.

1 ATC [MAJ ASHMAWY]: It's usually added by military judge if the
2 accused in his unsworn statement gives examples.

3 MJ [CAPT ALLRED]: Why don't you find that and bring that to me?

4 ATC [MAJ ASHMAWY]: Absolutely, sir.

5 MJ [CAPT ALLRED]: If you will. I don't remember seeing it this
6 morning, and I don't know exactly where we'll find it.

7 Okay, why don't we recess until 1400? Nope. **[Bailiff**
8 **handed another question from the members to the military judge.]**

9 Another question. Let's just read it here. I'll surprise you all.

10 "How would we express time already served in our
11 sentencing?"

12 It's the same thing. For example, if we believe that a
13 sentence of 10 years is appropriate, but we are considering his six
14 and a half years already in--you know, do we state 10 years with six
15 and a half already served or do we state 42 months from now?"

16 All right. I think we've discussed the answer to this
17 question, and if I tell them that he's going to get credit for part
18 and not credit for the rest then they figure out what number of
19 months they want to impose.

20 Okay. Good. We will see you at--let's come back at 1355
21 on the record for the parties so we can call the members in and get
22 them their answers at 1400.

23 **[The R.M.C. 803 session recessed at 1225, 7 August 2008.]**

1 **[The R.M.C. 803 session was called to order at 1401, 7 August 2008.]**

2 MJ [CAPT ALLRED]: The court is called to order. Please be
3 seated.

4 **[All persons did as directed.]**

5 MJ [CAPT ALLRED]: During the lunch recess, counsel brought me
6 from 61 MJ 482, *United States versus Barrier*, a proposed instruction
7 with respect to comparing the accused's unsworn statement, the
8 sentence that he mentioned. Both sides looked at this instruction
9 from this other case and appeared to agree that is an appropriate
10 instruction. So I will give that.

11 And I believe we have the answer prepared to give the
12 members about Appellate Exhibits 324 and 325. So, unless there is
13 objection, I'll call the members in and give--answer their question;
14 give them this final instruction and release them to deliberate.

15 TC [LCDR STONE]: No objection from the government, Your Honor.

16 DC [LCDR MIZER]: None from the defense, Your Honor.

17 MJ [CAPT ALLRED]: Commander? Okay.

18 Please ask the members to come in to the courtroom.

19 **[The R.M.C. 803 session terminated and the military commission**
20 **commenced at 1403, 7 August 2008.]**

21 BAILIFF: All rise **[all persons did as directed, and the members**
22 **entered the courtroom].**

1 MJ [CAPT ALLRED]: Okay. Please be seated **[all persons did as**
2 **directed]**. The members have returned to the courtroom.

3 Before departing, I received two questions from two
4 different members, it appears, which have been marked Appellate
5 Exhibit 324 and 325. They both asked essentially the same question,
6 and that has to do with the amount of time that the accused has been
7 detained or confined and how that will be reflected in his sentence.

8 The accused was detained by U.S. forces on November 24,
9 2001, has been continuously in the custody of U.S. forces since that
10 date. Between November 24, 2001 and the July 1st of 2003, the
11 accused was detained under the law of armed conflict as a battlefield
12 detainee. Being this--will not be receiving any expressed credit
13 against a sentence to confinement that you may adjudge for that
14 period. You should, however, consider that period of detention in
15 reaching any sentence to confinement that you reach. From July 1st,
16 2003 to the present date, the accused was detained for purposes of
17 participating in this trial, and I have awarded him credit on a day-
18 for-day basis for 60 months--61 months, maybe it is, and 8 days. In
19 other words, from July 1, 2003 until today, he will receive credit
20 for the period of time he served awaiting trial. You may consider
21 both of these periods and the way in which they will or will not be
22 credited in reaching the sentence that you ultimately reach. Is that
23 a satisfactory answer to both the questions?

1 **[The members nodded.]**

2 MJ [CAPT ALLRED]: Very good. Looks like I see some smiles,
3 head nods, and other expressions of affirmation.

4 Okay. I'd like to also instruct you that during the
5 accused's unsworn statement, he alluded to the case of another
6 individual, David Hicks, whom the accused indicated had received a
7 certain amount of punishment. The disposition of other cases is
8 irrelevant for your consideration in adjudging an appropriate
9 sentence for this accused. You did not know all the facts and
10 circumstances of those cases--of that case nor anything about that
11 accused in that case, and it is not your function to consider that
12 case at this trial. Likewise, it is not your position to consider
13 the disposition of other cases or to try to place the accused's case
14 in its proper place on the spectrum of some hypothetical scale of
15 justice. Even if you knew all the facts about the other case and the
16 other offender, that would not enable you to determine whether the
17 accused should be punished more harshly or more leniently because the
18 facts are different and because the disposition authority in that
19 case cannot be presumed to have any greater skill than you have in
20 determining an appropriate punishment. If there is to be meaningful
21 comparison of the accused's case to the case of David Hicks, it
22 should come by consideration of the convening authority at the time
23 she acts on the adjudged sentence in this case. The convening

1 authority can ameliorate a harsh sentence to bring it in line with
2 appropriate sentences in other cases, but she can not increase a
3 light sentence to bring it in line with similar cases.

4 In any event, this action is within her sole discretion.
5 You, of course, should not rely on this ameliorating action by the
6 convening authority in determining what is an appropriate sentence
7 for Mr. Hamdan for the offense of which he stands convicted. If the
8 sentence that you impose in this case is appropriate for the accused
9 in this case and for his offenses, you should not be concerned
10 whether other accused were punished differently under other
11 circumstances. You have the independent responsibility to determine
12 an appropriate sentence and you may not adjudge an excessive sentence
13 in reliance upon the possibility of mitigating action by some other
14 authority.

15 Any questions then before you retire to deliberate? Is it
16 fair to say that you don't require a recess before we you begin your
17 deliberations?

18 PRES: That's correct.

19 MJ [CAPT ALLRED]: Very good.

20 CDC [MR. MCMILLAN]: Your Honor, just for the complete avoidance
21 of doubt, could the defense request that there be a specific example
22 of an actual number provided that might come in from the jury
23 deliberation room and then how the credit for 61 months would be

1 applied to that number to result in an additional period of
2 confinement?

3 MJ [CAPT ALLRED]: Yes. Yes, okay, I don't mind doing that. If
4 you sentence the accused to 61 months of confinement, in other words,
5 time served. He will no longer be confined as a result of the
6 sentence of this court. If you sentence him to 8 years; 61 months
7 will be subtracted from that amount, and he will be serving the
8 balance as a result of a sentence of this court. Is that understood-
9 -clear how that would work out?

10 PRES: Yes, sir.

11 MJ [CAPT ALLRED]: Okay. We'll close for deliberations then.
12 We'll wait to hear from you when you're ready to proceed.

13 BAILIFF: All rise **[all persons did as directed, and the members**
14 **withdrew from the courtroom].**

15 **[The military commission closed at 1409, 7 August 2008.]**

16 **[The military commission opened at 1503, 7 August 2008.]**

17 MJ [CAPT ALLRED]: The court is called to order. The members
18 have returned to the courtroom.

19 Would you like a recess?

20 PRES: Yes, Your Honor.

21 MJ [CAPT ALLRED]: Why don't we recess for 15 minutes? Is that
22 too much?

23 PRES: 10 minutes is fine.

1 MJ [CAPT ALLRED]: 10 minutes. The court is in recess. Thank
2 you very much.

3 **[The military commission recessed and the R.M.C. 803 session was**
4 **called to order at 1503, 7 August 2008.]**

5 MJ [CAPT ALLRED]: The court is called to order outside the
6 presence of the members.

7 CDC [MR. SWIFT]: Your Honor, I understand that you're still
8 considering our punitive credit. We would like to add for the record
9 that last night Mr. Hamdan was moved prior to his sentence being
10 imposed to a separate wing in Camp Five. Camp Five is a maximum
11 security prison. He has been housed there, as Your Honor is well
12 aware, for the last year. However, his conditions of confinement
13 significantly differ as of last night in that Mr. Hamdan's--the wing
14 on which he is held has no other prisoners on it. In other words,
15 he's in solitary confinement. We believe that this is yet another
16 day of illegal pretrial punishment. A sentence has not been imposed,
17 and while this court can't do something about the level confinement,
18 we believe the con--the JTF jumped the gun because he has not yet
19 been sentenced to any time and punishment. So we would ask that this
20 day, along with the days in Camp Echo, be considered in-punitive
21 pretrial.

22 MJ [CAPT ALLRED]: Okay. Does the government have any
23 information about this new development?

1 TC [LCDR STONE]: Not that it's more then three to six seconds
2 old. I can--I do know that the position will be that it is not
3 solitary confinement. There are no solitary confinement cells in JTF
4 Guantánamo. It continues to be that way. It has been that way
5 forever. So to the--to the characterization and mischaracterization
6 with regards to solitary confinement, there clearly isn't, has never
7 been one, and never will be. With regards to whether he was moved to
8 a separate wing, based on the fact that he is an adjudged prisoner,
9 although not necessarily through with the sentence, I would have--I
10 wouldn't characterize necess--assuming that the facts are true, which
11 I don't know that they necessarily are, I wouldn't characterize it as
12 necessarily as even jumping the gun. I can certainly, if it's
13 anything of any significance, I can certainly give JTF a call and see
14 what the position was, how it happened, what it was, or whether he
15 was moved et cetera with regards to that. I'm not so sure that any
16 sort of declaration or anything else would otherwise be necessary.

17 MJ [CAPT ALLRED]: I'll accept the representation of parties, I
18 think, at this point if it's just----

19 TC [LCDR STONE]: But I will have to give them a call and see
20 what happened.

21 MJ [CAPT ALLRED]: Okay.

22 TC [LCDR STONE]: Because you know, I've had it for 9 seconds
23 now.

1 MJ [CAPT ALLRED]: We'll do that. I'll give you some time to
2 look into it. Why don't we recess until, well, 8 minutes from now.

3 [The R.M.C. 803 session recessed at 1506, 7 August 2008.]

4 [The military commission called to order at 1511, 7 August 2008.]

5 MJ [CAPT ALLRED]: The court is called to order and closed for
6 deliberations. Thank you.

7 [The military commission was closed at 1512, 7 August 2008.]

8 [The military commission was opened at 1544, 7 August 2008.]

9 MJ [CAPT ALLRED]: The court is called to order. The members
10 have returned to the courtroom.

11 Mr. President, have the members reached a sentence in this
12 case?

13 PRES: Yes Your Honor, we did.

14 MJ [CAPT ALLRED]: And is it reflected on the sentencing
15 worksheet?

16 PRES: It is.

17 MJ [CAPT ALLRED]: Have you signed that?

18 PRES: I have.

19 MJ [CAPT ALLRED]: Would you fold it in half and let the bailiff
20 ----

21 [The bailiff retrieved the findings worksheet and handed it to the
22 military judge. The military judge examined the findings worksheet,

1 handed it back to the bailiff to return to the president of the
2 members.]

3 MJ [CAPT ALLRED]: Okay. The sentence is in proper format.

4 Accused and Counsel, please rise.

5 [The accused and his counsels did as directed.]

6 MJ [CAPT ALLRED]: Mr. President, you may announce the sentence
7 of the court.

8 PRES: Thank you, Your Honor.

9 Salim Ahmed Hamdan, it is my duty as president to inform
10 you that this military commission sentences you:

11 To be confined for 66 months.

12 MJ [CAPT ALLRED]: Thank you. You may be seated.

13 [The accused and his counsels did as directed.]

14 MJ [CAPT ALLRED]: Mr. President, if I can retrieve that, and
15 bailiff, you give that to the court reporter.

16 Members of the court, you have now completely your duties
17 and you are discharged with my sincere thanks. Please leave all the
18 exhibits behind. If they are any classified notes that you have
19 taken, please leave those behind. Those will be destroyed for you.
20 Unclassified notes, you are free to take with you, if you wish to
21 keep them, or if you leave them behind, they will be destroyed by the
22 court reporter.

1 To assist you in determining what you may discuss about
2 this case now that it is over, I would like to give you some
3 guidance. At the beginning of the case, you took an oath as members
4 not to discover the voice or vote of any member of the court. This
5 means that you may not disclose how you or any other member of the
6 court voted. You may not disclose what opinion you or any other
7 member of the court held or expressed in your deliberation room.
8 You're free to say, "Many members felt this way, some felt that way.
9 We didn't believe this witness. We believed that witness," those
10 kinds of general comments, but you cannot disclose how any person
11 voted or what opinion any individual person, including yourself,
12 expressed in the deliberation room. Other than that, you are free to
13 talk to anyone about your service as a member of this court, that
14 includes the attorneys in this case, family members, and the press,
15 if you wish to talk to any of those people. Your deliberations are
16 carried on the secrecy of the deliberation room to permit the utmost
17 freedom of debate and so that each of you can express your views s
18 without fear of being subjected to public scorn or criticism by the
19 accused, the convening authority, or anyone else. In deciding
20 whether to answer questions about this case, and if so, what to
21 disclose, you should have in mind your own interests and the
22 interests of the other members of the court.

1 Do any members have questions about this guidance at this
2 time?

3 **[Negative response from the members.]**

4 MJ [CAPT ALLRED]: Very well. Members of the court, again, I
5 thank you for your service in this most significant and historic
6 case, and I discharge you with my thanks. You're free to withdraw
7 from the courtroom and go about your duties.

8 BAILIFF: All rise **[all persons did as directed]**.

9 MJ [CAPT ALLRED]: Oh, wait just a moment. Am I getting a
10 signal from the defense?

11 DC [LCDR MIZER]: No, sir.

12 MJ [CAPT ALLRED]: Mr. Hamdan is acting like he might want to
13 say something.

14 CDC [MR. SCHNEIDER]: The accused would like to say something,
15 Your Honor.

16 MJ [CAPT ALLRED]: Okay. If you'll be seated? We'll--Mr.
17 Hamdan would like to say something to you, and I'll--I'll give him
18 that privilege.

19 **[All persons were seated.]**

20 ACC [MR. HAMDAN]: I would like to apologize one more time to
21 all the members. And I would like to thank you for what you have
22 done for me. And I would like also to say--to thank the judge, and I
23 would like to thank everybody. And I apologize once again.

1 MJ [CAPT ALLRED]: Thank you, Mr. Hamdan, that was very
2 gracious.

3 Members of the court, thank you very much. You're excused.

4 BAILIFF: All rise.

5 **[All persons did as directed, the members were permanently excused,**
6 **and the members withdrew from the courtroom.]**

7 MJ [CAPT ALLRED]: Okay, please be seated.

8 **[All persons did as directed.]**

9 The members have withdrawn from the courtroom. Professor
10 Swift----

11 CDC [MR. SWIFT]: Yes, sir.

12 MJ [CAPT ALLRED]: Commander Mizer, I don't really know who's
13 the main--who I should address this question to. But have you
14 discussed with Mr. Hamdan his post trial and appellate rights?

15 CDC [MR. SWIFT]: We have discussed them in general. We have
16 tailored an appellate rights form, which it may be helpful to Your
17 Honor simply to go over with him, and then we'll sign it at the end.
18 And we can bring up the form that we tailored. We have not yet--
19 because it's not in Arabic, it's kind of hard to go over with him.
20 We've tailored the form the best that we could.

21 MJ [CAPT ALLRED]: Okay.

22 CDC [MR. SWIFT]: There was none available.

1 MJ [CAPT ALLRED]: I will ask you to just go over that with him
2 later in the privacy of your consultation areas, get his signature on
3 it, and deliver it to the court reporter for inclusion in the record
4 of trial.

5 CDC [MR. SWIFT]: We will do that.

6 MJ [CAPT ALLRED]: And I will discuss generally with him now
7 what will happen next.

8 Mr. Hamdan, I want to talk to you now about what--what
9 comes after the trial. I want to make sure you understand that the
10 next phase of this proceeding involves preparing a copy on the record
11 a trial. That means that the court reporter will assemble all the
12 documents, all the photographs, all the maps, and all the testimony
13 into one document. That will be delivered to you or to your defense
14 attorneys. You are entitled to have a copy of that. Have you talked
15 about this with your attorneys?

16 CDC [MR. SWIFT]: We did not talk at length about where the
17 record would go. We talked about his right to appeal.

18 MJ [CAPT ALLRED]: Okay. I'm--I'm sure it will be written in
19 English, so it probably make most sense for one of your attorneys to
20 take custody of your copy of the record. Once the record of trial is
21 prepared, your attorneys will have the right to help you submit
22 matters to the convening authority for her consideration, before she
23 takes action on the findings and sentence imposed by this military

1 commission. The convening authority has the power to reduce the
2 sentence to change any finding of guilty to a finding of not guilty
3 and to otherwise give you relief or to improve the outcome of the
4 trial for you, for any reason or for no reason at all. Once the
5 convening authority has made her decision with respect to the
6 findings and the sentence of this commission, you will have the right
7 to have the case reviewed by the Court of Military Commissions Review
8 and other federal courts in our system. If we have made any errors
9 in the conduct of this trial, higher courts will correct them. At
10 some point, given the sentence imposed of 66 months and the fact that
11 you will be given credit for 61 months of confinement already served,
12 you will be released from the status of being a post-trial confinee.
13 After that, I don't know what happens. Apparently, you'll become
14 eligible for administrative review of your threat to the United
15 States or to its allies, perhaps; I don't know. And at some point,
16 you'll become eligible for release to return to your country. That's
17 what I understand. You probably know better than I how that part
18 works.

19 Do you have any questions, Mr. Hamdan, about these rights
20 or how they by the effect you?

21 CDC [MR. SCHNEIDER]: No questions, Your Honor.

22 MJ [CAPT ALLRED]: Okay.

1 Well, this has been a long journey for Mr. Hamdan, who
2 began in 2001; for Mr. Swift, who began in 2004; for Mr. McMillan and
3 Schneider, who began, I guess, in 2004; and for others who have
4 joined the case along the way. It's been a pleasure for me to work
5 with you. I commend you all for your professionalism and your
6 courtesy to each other and the tremendous investment of hard work
7 and--and your professional skills that have gone into the trial of
8 this case. I wish you all God speed in your future journeys and
9 other cases you may try.

10 And Mr. Hamdan, I hope that the day comes that you return
11 to your wife and your daughters and your country. And that you're
12 able to be a provider----

13 ACC [MR. HAMDAN]: God willing.

14 MJ [CAPT ALLRED]: ----and a father, and a husband in the best
15 sense of all those terms.

16 ACC [MR. HAMDAN]: God willing.

17 MJ [CAPT ALLRED]: In Shallah. **[God willing in Arabic.]** Okay.
18 Is there anything else before we adjourn this military commission?

19 TC [LCDR STONE]: No, sir.

20 MJ [CAPT ALLRED]: Okay. I owe you a ruling of one motion. I
21 don't know that I will finish that today or tomorrow before I leave
22 the island, but before I authenticate the record, I will. And----

1 TC [LCDR STONE]: I do actually have an answer from JTF GTMO on
2 the----

3 MJ [CAPT ALLRED]: About last night?

4 TC [LCDR STONE]: Yes, sir, about the *sua sponte* one day motion
5 for pretrial confinement credit.

6 MJ [CAPT ALLRED]: Yes.

7 TC [LCDR STONE]: The accused is held in a manner consistent
8 with the conditions under the Geneva Convention, Article 476 and as
9 well----

10 MJ [CAPT ALLRED]: Which convention?

11 TC [LCDR STONE]: The Geneva Convention--the Fourth Geneva
12 Convention.

13 MJ [CAPT ALLRED]: The Geneva Conventions? The Geneva
14 Conventions?

15 TC [LCDR STONE]: Yes, sir. Which talks as well as 16th Naval
16 Regulation 1640.9, which talks about the Naval--which is the Naval
17 Corrections Manual, which sets out a very specific standard with
18 regards to the moving an individual who has been convicted to a
19 separate location, however, he was--because he was convicted last
20 night, he was within his own wing, but had a line of sight guard
21 within him due to his emotional state. There was a linguist, and he
22 had the right to medical 24 hours a day, and there was--there was

1 however, no one else on his cell block, but it is not solitary
2 confinement per JTF GTMO regulations.

3 MJ [CAPT ALLRED]: Well, that sounded like a pretty thoughtful
4 response.

5 CDC [MR. SWIFT]: I would point out that they were one day
6 early, sir. He had not yet been sentenced.

7 MJ [CAPT ALLRED]: Well, we'll fold that into the great
8 constellation of your request for credit for punitive conditions of
9 pretrial confinement.

10 Okay. I'm reluctant to end this, but I guess it's that
11 time. I wish you well.

12 This court is closed.

13 **[The military commission was adjourned at 1557, 7 August 2008.]**

14 **[END OF PAGE]**